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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

JANICE SHARP et al., Plaintiffs and Appellants, v. ALTA SAN RAFAEL ASSOCIATION, INC., et al., Defendants and Respondents.	B207606 (Los Angeles County Super. Ct. No. GC034608)

APPEAL from a judgment of the Superior Court of Los Angeles County, Jan A. Pluim, Judge. Affirmed.

Knapp, Petersen & Clarke and Kevin J. Stack for Plaintiffs and Appellants.

Gordon & Rees, M.D. Scully, Christopher B. Cato and Eric M. Volkert for Defendants and Respondents.

I. INTRODUCTION

Plaintiffs, Janice Sharp and Dane Hoiberg, appeal from a February 5, 2008 summary judgment in favor of defendants, Alta San Rafael Association, Inc., Marilyn Buchanan, Charles Malouf, Anne Longyear, and John Craig. We affirm the judgment.

II. BACKGROUND

A. The Pleading

Plaintiffs are members of the Alta San Rafael Association, Inc. (the association), and the owners of lot 6. Lot 6 is a parcel of land within the association. Paul Anderson and Elizabeth Anderson, named defendants who are not parties to this appeal, own lot 7, the neighboring parcel. Lots 6 and 7 are in the City of Pasadena (the city). The individual defendants—Ms. Buchanan, Mr. Malouf, Ms. Longyear, and Mr. Craig—are individual members of the association's board.

The operative pleading is a verified second amended complaint. The second amended complaint alleges the Andersons plan to construct a home on lot 7. Plaintiffs assert three general claims against the Andersons. First, in order to access their garage, the Andersons will have to construct a concrete driveway on lot F, which the association owns. Defendants have no right to construct a driveway on lot F absent the consent of each member of the association. No such consent has been obtained. Second, defendants and their grantors, Mr. Anderson's parents, have created an illegal lot by purporting to merge four lots into one without obtaining the city's approval through its Subdivision Committee. Third, the Andersons have applied to the city for building and grading permits in violation of the Subdivision Map Act. (In a prior appeal, we held nothing in the Subdivision Map Act or provisions of the Pasadena Municipal Code prevented the city from issuing the building and grading permits to the Andersons. (*Sharp v. City of Pasadena* (Sept. 25, 2008, B201855) [nonpub. opn.]).)

Plaintiffs allege the association and the individual defendants—its board members—are in violation of the association's covenants, conditions and restrictions (second cause of action). Plaintiffs further allege the individual board members have breached their fiduciary duties (fourth cause of action). In their second and fourth causes of action, plaintiffs allege the Andersons' planned development will trespass on Lot F and will violate sections 32 and 33 of the covenants, conditions and restrictions by interfering with plaintiffs' views, outlook, and surroundings. Plaintiffs further allege the individual defendants breached their fiduciary duties as members of the association's board by rubber-stamping the Andersons' application. The approval was provided despite knowledge the encroachment on lot F required the consent of *each* association member. Further, the approval was provided in order to avoid calling attention to the fact that Ms. Buchanan had herself trespassed and encroached on a commonly-owned lot. Plaintiffs sought declaratory (fifth cause of action) and injunctive (sixth cause of action) relief and damages.

B. The Summary Judgment Motion

Defendants filed a May 11, 2007 summary judgment or adjudication motion. They argued: plaintiffs could not as a matter of law establish a breach of the covenants, conditions and restrictions as alleged in the second cause of action; the business judgment rule insulated the board members from potential liability; there was no evidence of any fiduciary duty breach as alleged in the fourth cause of action; and the fifth and sixth causes of action, for declaratory and injunctive relief respectively, failed as a matter of law.

Defendants presented evidence the Andersons' building plans were the subject of several meetings open to all association members. Meetings at which the project was raised and openly discussed were held on July 29, August 26, September 30, October 6, and November 11, 2004. The board members also reviewed and discussed nine letters plaintiffs had written. The board made the Andersons' development plans available for

review by association members in two separate locations. A "minimized copy" of the plans was also mailed directly to plaintiffs. Ms. Buchanan communicated with plaintiffs on several occasions in an attempt to address their concerns. The board also considered legal advice relating to the "'buildable'" status of lot 7. The board further considered a letter and attachments received from Mr. Anderson and input from other association members.

On November 11, 2004, the board voted to conditionally approve the Andersons' proposed project. The board concluded: "a. Based on the advice of counsel, [it] did not believe that it had the power under the plain language of the [covenants, conditions and restrictions] to determine which lots were buildable or otherwise prohibit an [association] member from building on their property absent a violation of a specific provision in the [covenants, conditions and restrictions]. [¶] b. The [covenants, conditions and restrictions] did not specifically prohibit the Anderson[s'] . . . proposal. [¶] b. The [covenants, conditions and restrictions] did not specifically prohibit the Anderson[s'] proposal. [¶] c. The Anderson[s'] proposal did not violate the specific requirements set forth in the [covenants, conditions and restrictions], including height, square footage, and style. Rather the overall design of the house, as depicted in the plans presented by the Anderson[s] to the Board, appeared to be consistent with the architectural styles of the other houses in the neighborhood. [¶] d. Approval of the Anderson[s'] proposal was consistent with upholding the views, outlooks, and surroundings of the [association] members, as well as other development in the tract, specifically because other homes in the [association] were placed at closer distances than the planned distance between the Anderson[s'] proposed home and the Plaintiffs' home. [¶] e. A previous Board decision from 1974 that apparently denied permission to build on Lot 7 looked beyond the plain language of the [covenants, conditions and restrictions] and did not provide sufficient information to determine the nature of the development proposed at that time. . . . . [¶] f. Other [association] members had performed similar construction activities relating to Association property with or without prior Board approval. [¶] g. The Anderson[s']

proposal would assist with erosion control on Lot F, an issue previously raised by Plaintiff Sharp in the Summer of 2004 as memorialized in a letter to the Board . . . ."

The board gave final approval to the project on January 13, 2005, after the Andersons agreed to comply with specified conditions. The association board members made the decision to approve the Andersons' project in good faith, based on review of various documents and consideration of competing viewpoints, as well as legal advice, and after much discussion and analysis.

Plaintiffs opposed defendants' summary judgment or adjudication motion. Ms. Sharp declared: that despite repeated requests, plaintiffs never received copies of the Andersons' actual building and grading plans; therefore, plaintiffs lacked sufficient information to be able to object that the plans violated the covenants, conditions and restrictions; further, when plaintiffs purchased lot 6, lot 7 was vacant; the privacy afforded to plaintiffs by the fact lot 7 was vacant was part of their motivation in purchasing their house; a previous owner of lot 7 had been denied permission to build on the lot; and lot 7 had no preexisting access across lot F. In reply, defendants filed objections to plaintiffs' evidence. Defendants listed 32 specific objections. The trial court granted defendants' summary judgment motion.[1] Judgment was entered on February 5, 2008.

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[1] The November 9, 2007 minute order reads as follows: "Motion for Summary Judgment is granted. [¶] . . . At the outset, it should be noted that this is the third lawsuit filed by plaintiffs to prevent defendant Andersons from building on Lot 7 within this association of homes. Plaintiffs reside on Lot 6. [¶] In the 2nd Cause of Action for violation of the [covenants, conditions and restrictions,] plaintiffs do not claim a violation of any specific provision of the [covenants, conditions and restrictions] other than Section 33, which sets forth the general purpose and intent of the [covenants, conditions and restrictions]. . . . This section states that the general purpose and intent of the [covenants, conditions and restrictions] is to preserve[,] maintain and further develop the character of Tract No. 8702. Plaintiffs also rely on an unrecorded historical document called the Olmstead Plan. . . . The Court gives no weight to the unrecorded Olmstead Plan, which merely suggests the general intent and purpose of the development. Both Section 33 and the Olmstead Plan are general provisions laying out the purposes of the planned development. Plaintiffs' reference to Section 33 and the Olmstead Declaration fail to create a triable issue as there are more specific [covenant] provisions governing the

building of a residence by a member. [See height restrictions (Section 11), set back provisions (Section 15) and architectural style limitations (Section 6), etc.] The recorded [covenants, conditions and restrictions] are for the most part specific in nature and thus will govern any interpretation regarding violations thereof. . . . [See *White v. Dorman* (1981) 116 Cal.App.3d 892, in which the Court stated that more specific terms of the [covenants, conditions and restrictions] will govern over a general term involving views[.]] Plaintiffs have failed to allege such a specific violation. Although never alleged in the pleadings, a violation of Section 9 of the [covenants, conditions and restrictions] is asserted in the resisting papers. Plaintiffs state that Section 9 was somehow violated when the subject dispute was not submitted to a 'competent Landscape Architect.' As the instant case does not deal with a dispute over the planting of trees, hedges or shrubbery, Section 9 has no application and no bearing on whether a building residence meets the requirements of the [covenants, conditions and restrictions]. [¶] Plaintiffs in their 4th[] Cause of Action allege a violation of defendants[']' fiduciary duties in approving the application of the Andersons to build on Lot 7. Defendants cite to California Corporations Code Section 7231, generally referred to as the business judgment rule, and to evidence that there was no breach of their fiduciary duties. This Court, in reviewing a decision made by a director, must look at whether he or she acted capriciously or arbitrarily. [See *Cohen v. Kite Hill Community Assn.* (1983) 142 Cal.App.3d 642, 650.] The undisputed evidence shows that the defendants held at least 5 Board meetings that were open to all [association] members, reviewed letters from plaintiffs raising their concerns, considered written comments from other members both supporting and opposing the plans, sent letters to plaintiffs explaining their actions, heard a presentation by the defendant Anderson[s'] architect, employed legal counsel who rendered written legal advice, and reviewed a building permit issued by the [city] before determining that the development did not violate the [covenants, conditions and restrictions]. . . . [Furthermore, they issued a conditional approval and thereafter a final approval when the Andersons removed or agreed to be bound by the remaining conditions.] This Court finds as a matter of law that defendants acted in good faith in what they believed was [the association's] best interest and thus have met the business judgment rule. The Court further finds that the plaintiffs' claims of bias by the defendants are pure speculation, unsupported by substantial evidence. [¶] Having ruled on the 2nd and 4th Causes of Action, the 5th and 6th Causes of Action also fail as a matter of law. . . . Defendants' objections to plaintiffs' evidence are sustained. [¶] This ruling results in a disposition of the entire case."

III. DISCUSSION

A. Summary Judgment Standard Of Review

Our Supreme Court has held: "Because this case comes before us after the trial court granted a motion for summary judgment, we take the facts from the record that was before the trial court when it ruled on that motion. (*State Department of Health Services v. Superior Court* (2003) 31 Cal.4th 1026, 1034-1035.) '"We review the trial court's decision de novo, considering all the evidence set forth in the moving and opposing papers except that to which objections were made and sustained."' (*Id.* at p. 1035.) We liberally construe the evidence in support of the party opposing summary judgment and resolve doubts concerning the evidence in favor of that party. (*Wiener v. Southcoast Childcare Centers, Inc.* (2004) 32 Cal.4th 1138, 1142.)" (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1037; accord, *Conroy v. Regents of University of Cal.* (2009) 45 Cal.4th 1244, 1250; *Lonicki v. Sutter Health Cent.* (2008) 43 Cal.4th 201, 206.)

B. Review Of Homeowners Association Board Decisions

It is well settled that homeowners' associations must exercise their authority to approve or disapprove an individual homeowner's improvement plans in conformity with the declaration of covenants, conditions and restrictions and in good faith. (*Hannula v. Hacienda Homes* (1949) 34 Cal.2d 442, 447; *Cohen v. Kite Hill Community Assn.* (1983) 142 Cal.App.3d 642, 650; *Bramwell v. Kuhle* (1960) 183 Cal.App.2d 767, 779.) As our Supreme Court in *Hannula* stated: "Each of the decisions enforcing like restrictions has held that the refusal to approve plans must be a reasonable determination made in good faith. [Citations.]" (*Hannula v. Hacienda Homes, supra,* 34 Cal.2d at p. 447; see *Clark v. Rancho Santa Fe Assn.* (1989) 216 Cal.App.3d 606, 619-620.) The good faith requirement applies equally to the approval of plans: "The converse should likewise be true. . . . '[T]he power to approve plans . . . must not be exercised capriciously or

arbitrarily."' (*Bramwell v. Kuhle, supra,* 183 Cal.App.2d at p. 779; see also *Norris v. Phillips* (Colo.App. 1980) 626 P.2d 717, 719.) Furthermore, in light of the important role played by private homeowners' associations in providing public-service functions, courts have recognized that such entities owe a fiduciary duty to their members. (*Clark v. Rancho Santa Fe Assn., supra,* 216 Cal.App.3d at p. 620; *Ironwood Owners Assn. IX v. Solomon* (1986) 178 Cal.App.3d 766, 772 [association's decision to enforce covenants, conditions and restrictions against members must be made reasonably in good faith and not arbitrarily nor capriciously]; *Cohen v. Kite Hill Community Assn., supra,* 142 Cal.App.3d at pp. 650-651; see also *Berryman v. Merit Property Management, Inc.* (2007) 152 Cal.App.4th 1544, 1558 [association has a fiduciary relationship with its members]; *Kovich v. Paseo Del Mar Homeowners' Assn.* (1996) 41 Cal.App.4th 863, 867 [same].)

In *Lamden v. La Jolla Shores Clubdominium Homeowners Assn.* (1999) 21 Cal.4th 249, 253, 265, our Supreme Court articulated, as a variant of the business judgment rule, a rule of judicial deference to decisions of a homeowner association board. (*Ekstrom v. Marquesa at Monarch Beach Homeowners Assn.* (2008) 168 Cal.App.4th 1111, 1121; *Ostayan v. Nordhoff Townhomes Assn., Inc*. (2003) 110 Cal.App.4th 120, 128.) In *Lamden,* a condominium association decided to spot-treat for termites rather than tent and fumigate. Our Supreme Court held: "Where a duly constituted community association board, upon reasonable investigation, in good faith and with regard for the best interests of the community association and its members, exercises discretion within the scope of its authority under relevant statutes, covenants and restrictions to select among means for discharging an obligation to maintain and repair a development's common areas, courts should defer to the board's authority and presumed expertise. Thus, we adopt today for California courts a rule of judicial deference to community association board decisionmaking that applies, regardless of an association's corporate status, when owners in common interest developments seek to litigate ordinary maintenance decisions entrusted to the discretion of their associations' boards of directors. [Citation.]" (*Lamden v. LaJolla Shores Clubdominium Homeowners Assn., supra,* 21 Cal.4th at p.

253; accord *Harvey v. The Landing Homeowners Assn*. (2008) 162 Cal.App.4th 809, 820.) Interpretation of association's covenants, conditions and restrictions is, however, subject to de novo review. (*Ekstrom v. Marquesa at Monarch Beach Homeowners Assn., supra,* 168 Cal.App.4th at pp. 1121, 1123; *Dolan-King v. Rancho Santa Fe Assn.* (2000) 81 Cal.App.4th 965, 974.)

The *Lamden* rule was applied to circumstances similar to those now before us in *Dolan-King v. Rancho Santa Fe Assn., supra,* 81 Cal.App.4th at pages 969-974. In *Dolan-King,* a homeowner sued her homeowners association after it rejected her proposed plans for home additions and other improvement to her property. (*Id*. at pp. 969-970.) The homeowner sought a declaration the association's actions were invalid. (*Ibid.*) The Court of Appeal noted the action was one for declaratory relief and the trial court's determination was subject to an abuse of discretion standard of review. (*Id.* at p. 974.) The Court of Appeal further held, however, that because the underlying facts—the homeowner's proposed designs and the board's actions—were undisputed, the case presented a question of law. (*Id.* at p. 974.) The court further held: "[T]o the extent our review of the [trial] court's declaratory judgment involves an interpretation of the Covenant's provisions, that too is a question of law we address de novo. [Citations.]" (*Ibid.*)

Covenants, conditions and restrictions have been construed as contracts in some situations. (See *Frances T. v. Village Green Owners Assn.* (1986) 42 Cal.3d 490, 512; *Barrett v. Dawson* (1998) 61 Cal.App.4th 1048, 1054; *Franklin v. Marie Antoinette Condominium Owners Assn.* (1993) 19 Cal.App.4th 824, 833-834.) Interpretation of the covenants, conditions and restrictions presents a question of law addressed de novo. (*Ekstrom v. Marquesa at Monarch Beach Homeowners Assn., supra,* 168 Cal.App.4th at p. 1121; *Dolan-King v. Rancho Santa Fe Assn., supra,* 81 Cal.App.4th at p. 974; *City of El Cajon v. El Cajon Police Officers' Assn.* (1996) 49 Cal.App.4th 64, 71.) The rules governing interpretation of contracts generally apply to interpretation of covenants, conditions and restrictions. (*Nahrstedt v. Lakeside Village Condominium Assn.* (1994) 8 Cal.4th 361, 380-381; *Harvey v. The Landing Homeowners Assn., supra,* 162

Cal.App.4th at p. 817; *14859 Moorpark Homeowners Assn. v. VRT* Corporation (1998) 63 Cal.App.4th 1396, 1410.) As the Court of Appeal held in *Harvey*: "Where, as here, the trial court's interpretation of the [covenants, conditions and restrictions] does not turn on the credibility of extrinsic evidence, we independently interpret the meaning of the written instrument. (*Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 865-866.) [¶] The language of the [covenants, conditions and restrictions] governs if it is clear and explicit, and we interpret the words in their ordinary and popular sense unless a contrary intent is shown. (*Franklin v. Marie Antoinette Condominium Owners Assn.*[, *supra,*] 19 Cal.App.4th [at p.] 829; see also Civ. Code, § 1644.) The parties' intent is to be ascertained from the writing alone if possible. (*WYDA Associates v. Merner* (1996) 42 Cal.App.4th 1702, 1709.) If an instrument is capable of two different reasonable interpretations, the instrument is ambiguous. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 798.) In that instance, we interpret the [covenants, conditions and restrictions] to make them lawful, operative, definite, reasonable and capable of being carried into effect, and must avoid an interpretation that would make them harsh, unjust or inequitable. (Civ. Code, § 1643; see also *Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc.* (2003) 109 Cal.App.4th 944, 961.)" (*Harvey v. The Landing Homeowners Assn.*, *supra*, 162 Cal.App.4th at pp. 817-818, fns. omitted.)

C. Plaintiffs Have Not Met Their Burden On Appeal

Plaintiffs contend there are triable issues of material fact and, therefore, the summary judgment should be reversed. Defendants argue the judgment may be affirmed because plaintiffs have failed to comply with the rules applicable to appeals. Specifically, defendants argue plaintiffs failed to: cite to the record as required by California Rules of Court, rule 8.204(a)(1)(C); provide copies of relevant documents; and conduct appropriate legal and factual analysis. We agree.

Plaintiffs have failed to sustain their burden of demonstrating reversible error in three respects. First and foremost, plaintiffs concede the trial court sustained defendants' objections to the majority of their evidence. They briefly argue, without citation to the record or to legal authority, and without any meaningful analysis, that the trial court erred in sustaining the evidentiary objections. They assert: "The [defendants] filed evidentiary objections to much of the evidence submitted by [plaintiffs] in opposition to the motion for summary judgment. [¶] A record was made on behalf of [plaintiffs] contesting the court's inclination to sustain evidentiary objections at the time of the hearing on November 9, 2007. (RT 53-66.) [¶] The court sustained all objections other than a belatedly withdrawn objection number 11. As pointed out in the oral argument, the court sustained objections to testimony given by [defendants] at deposition without a proper basis. [¶] The court refused to consider [plaintiffs'] exhibit 1 which is original tract map 8702 which was subject to judicial notice pursuant to Evidence Code section 425(d). Exhibit 2 was a lot comparison diagram drawn by [plaintiffs]. Exhibit 3 included excerpts of the deposition of [defendant] Charles Malouf. Exhibit 4 was the deposition of [defendant] Longyear. Exhibit 5 was the deposition of [defendant] Buchanan. Exhibit 6 was the deposition of [defendant] Craig. Exhibit 7 was the deposition of Art Lacerte. Exhibit 8 was the deposition of Dale Pelch, counsel for the [defendants] and association of matters. [*Sic*] Exhibit 9 was a letter from Bruce Anderson to the [defendant] Board Members. The document was authenticated by [defendant] John Craig. Exhibit 10 was an email from Paul Anderson to [defendant] Craig. Exhibit 12 was an email to [defendant] Buchanan. Exhibit 13 was an email from [defendant] Malouf to Buchanan. Exhibit 14 was excerpts of the deposition of sworn testimony by Bruce Anderson. Exhibit 15 was a lot size spread sheet. Exhibit 16 was a letter from Bruce Anderson to the [association] Board of Directors. Exhibit 17 was a letter from Janice Sharp to Bruce Anderson. [¶] Other objections included objections 21 through 32 which pertain to the declaration of Janice Sharp. [¶] The superior court committed error in sustaining objections to the evidence of [plaintiffs], which is grounds for reversal."

Plaintiffs have not demonstrated the trial court's evidentiary rulings were in error. (*Jessen v. Mentor Corp.* (2008) 158 Cal.App.4th 1480, 1492, fn. 14; *Roe v. McDonald's Corp.* (2005) 129 Cal.App.4th 1107, 1114.) Plaintiffs have not identified the correct standard of review—abuse of discretion. (*Dart Industries, Inc. v. Commercial Union Ins. Co.* (2002) 28 Cal.4th 1059, 1078; *People v. Alvarez* (1996) 14 Cal.4th 155, 203.) Moreover, plaintiffs have not specified the evidentiary objections to which their arguments are addressed. They have not discussed the multiple grounds of each objection. It is plaintiffs' burden on appeal to show that the trial court abused its discretion. (*In re Lockheed Litigation Cases* (2004) 115 Cal.App.4th 558, 564; see *Dart Industries, Inc. v. Commercial Union Ins. Co., supra*, 28 Cal.4th at p. 1078.) Plaintiffs have not established an abuse of discretion. Therefore, the trial court's evidentiary rulings stand. Moreover, we cannot determine whether the "facts" to which plaintiffs refer in their briefs are derived from evidence: in the record which was not the subject of evidentiary objections; as to which evidentiary objections were sustained; or that survived the evidentiary objections.

Second, it is plaintiffs' burden on appeal from a summary judgment to demonstrate reversible error. (*Howard v. Thrifty Drug & Discount Stores* (1995) 10 Cal.4th 424, 443; *Jones v. Department of Corrections and Rehabilitation* (2007) 152 Cal.App.4th 1367, 1376; see generally, *Ballard v. Uribe* (1986) 41 Cal.3d 564, 574-575; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 331.) This court will not develop plaintiffs' arguments for them. (*Employers Mut. Cas. Co. v. Philadelphia Indem. Ins. Co.* (2008) 169 Cal.App.4th 340, 351-352; *Alvarez v. Jacmar Pacific Pizza Corp.* (2002) 100 Cal.App.4th 1190, 1206, fn. 11.) Plaintiffs must affirmatively establish error by argument adequately developed *with specific reference to the record on appeal*. (*Estate of Randall* (1924) 194 Cal. 725, 728-729; *Pringle v. La Chapelle* (1999) 73 Cal.App.4th 1000, 1003-1004 & fn. 2; *Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6; Cal. Rules of Court, rule 8.204(a).) We are not required to make an independent, unassisted study of the record in search of support for plaintiffs' arguments. (*Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115-1116; *In re Marriage of Schroeder* (1987)

192 Cal.App.3d 1154, 1164.) California Rules of Court, rule 8.204(a) is consistent with the decisional authority and states in part: "(1) Each brief must: [¶] . . . [¶] (C) Support any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears." A failure to comply with the foregoing is "'especially acute'" when the appeal is from a summary judgment. (*Spangle v. Farmers Ins. Exchange* (2008) 166 Cal.App.4th 560, 564, fn. 3, quoting *Bernard v. Hartford Fire Ins. Co.* (1991) 226 Cal.App.3d 1203, 1205; *Jones v. Department of Corrections and Rehabilitation* (2007) 152 Cal.App.4th 1367, 1376.) Absent a properly supported argument, the trial court's ruling is presumed to be correct. (*Park Place Estates Homeowners Assn. v. Naber* (1994) 29 Cal.App.4th 427, 433; *Kearl v. Board of Medical Quality Assurance* (1986) 189 Cal.App.3d 1040, 1050-1052; *Rossiter v. Benoit* (1979) 88 Cal.App.3d 706, 712.)

Plaintiffs have not provided citations to the record on appeal in support of their claims. Their statement of facts is supported by citations to pleadings. The argument portion of their opening brief refers to "disputed fact numbers," "NOL" and "PNOL" numbers, without reference to the record on appeal. We will not conduct an unassisted search of the record on appeal in an attempt to locate evidence in support of plaintiffs' claims.

Third, plaintiffs raise several arguments without citation to the record or pertinent legal authority and without a developed legal analysis. An issue raised without proper citation to the record on appeal and appropriate legal authority and analysis is deemed to be without foundation and merits no discussion. (*Roe v. McDonald's Corp., supra,* 129 Cal.App.4th at p. 1114; *People v. Dougherty* (1982) 138 Cal.App.3d 278, 282.) For example, plaintiff argues the Andersons' lot is not buildable: "In or around 1974, a previous owner of Lot 7 sought the permission of the Association to develop the property. See, NOL Ex. 43. The Association denied that owner permission to develop Lot 7, listing ten specific reasons why the lot was not considered to be a buildable lot. Among these reasons was that the lot was 'too small to support a dwelling compatible with the surrounding homes.' The decision to deny permission to develop the property

was not one made by the Board alone, but was based on a vote of the entire membership. [¶] Nothing has changed in the intervening years which would justify a reversal of the earlier decisions of the Association that Lot 7 was not a buildable lot. At a minimum, since the original decision to deny permission to develop Lot 7 was one which was made by the entire membership, any reversal of that decision would similarly have to be submitted to a vote of the entire membership. Unless and until the membership votes to reverse its earlier decision that Lot 7 is not a buildable lot, any decision by the Board, acting alone, is void." As discussed above, this is not proper argument. (*Roe v. McDonald's Corp., supra,* 129 Cal.App.4th at p. 1114; *People v. Dougherty, supra*, 138 Cal.App.3d at p. 282.) The same is true with respect to plaintiffs' assertion the trial court erred in denying them leave to file a third amended complaint.

D. The Trial Court's Ability To Evaluate Defendants' Conduct As A Matter of Law

Plaintiffs contend it was reversible error for the trial court to evaluate the legality of defendants' actions as a matter of law. Plaintiffs argue the application of the facts to the Corporations Code section 7231[2] standard is question for the trier of fact. Plaintiffs

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[2] Corporations Code section 7231 states: "(a) A director shall perform the duties of a director, including duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner such director believes to be in the best interests of the corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. [¶] (b) In performing the duties of a director, a director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by: [¶] (1) One or more officers or employees of the corporation whom the director believes to be reliable and competent in the matters presented; [¶] (2) Counsel, independent accountants or other persons as to matters which the director believes to be within such person's professional or expert competence; or [¶] (3) A committee of the board upon which the director does not serve, as to matters within its designated authority, which committee the director believes to merit confidence, so long as, in any such case, the director acts in good faith, after reasonable inquiry whent he need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted. [¶] (c) A person who

assert, "In this case, [plaintiffs] have pointed out numerous ways in which the [defendants] failed to conduct a reasonable inquiry in good faith." As discussed above, however, plaintiffs have not cited evidence (as to which objections were *not* sustained) in the record on appeal that supports their triable issue arguments. Further, it is true the existence of a breach of duty is ordinarily a factual question for the trier of fact. (*Harvey v. The Landing Homeowners Assn., supra,* 162 Cal.App.4th at p. 822; *Tsakos Shipping & Trading, S.A. v. Juniper Garden Town Homes, Ltd.* (1993) 12 Cal.App.4th 74, 96, fn. 13; *Lysick v. Walcom* (1968) 258 Cal.App.2d 136, 150.) However, when, as here, the facts as to defendants' conduct are undisputed, a trial court may conclude as a matter of law that they acted reasonably and in good faith. (*Harvey v. The Landing Homeowners Assn., supra,* 162 Cal.App.4th at pp. 822-825; *Tsakos Shipping & Trading, S.A. v. Juniper Garden Town Homes, Ltd., supra,* 12 Cal.App.4th at p. 96, fn. 13; *Lysick v. Walcom, supra,* 258 Cal.App.2d at p. 150.)

E. Appointment Of A Landscape Architect

Plaintiffs contend defendants breached sections 4 and 9 of the covenants, conditions, and restrictions by failing to appoint a landscape architect to consider the Andersons' development plans. Section 4 of covenants, conditions, and restrictions applies when there is a dispute between the property owner and the association as to the precise location of a proposed building on the lot.[3] Section 9 governs disagreements

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performs the duties of a director in accordance with subdivisions (a) and (b) shall have no liability based upon any alleged failure to discharge the person's obligations as a director, including, without limiting the generality of the foregoing, any actions or omissions which exceed or defeat a public or charitable purpose to which assets held by a corporation are dedicated."

3 Section 4 of the covenants, conditions and restrictions states: "No building, fence, wall, sidewalk, steps, awning, tent, pole, or structure shall be erected, altered or maintained upon any part of said property, unless plans and specifications therefor, showing the construction, nature, kind, shape, height, material and color scheme therefor, and block plan indicating the location of such structure on the building site, and, when

between the association and the owner of any property within the association as to proposed landscaping.[4] Both sections 4 and 9 of the covenants, conditions and restrictions call for the dispute to be resolved by a landscape architect. This argument exceeds the scope of plaintiffs' pleading and therefore the issues that must be addressed in connection with a summary judgment motion. (*Conroy v. Regents of University of Cal.* (2009) 45 Cal.4th 1244, 1250; *Turner v. Anheuser-Busch, Inc.* (1994) 7 Cal.4th 1238, 1252; *Goehring v. Chapman University* (2004) 121 Cal.App.4th 353, 364.) In any event, as noted above, we interpret the application of the covenants, conditions and restrictions to the undisputed facts as a matter of law. (*Ekstrom v. Marquesa at Monarch Beach Homeowners Assn., supra,* 168 Cal.App.4th at p. 1121; *Dolan-King v. Rancho Santa Fe Assn., supra,* 81 Cal.App.4th at p. 974; *City of El Cajon v. El Cajon Police*

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specifically requested, the grading plans of the building site to be built upon, shall have been first submitted to, approved and a written permit issued by the Association. However, said Association shall approve such plans and specifications, provided the same are in accordance with the conditions, restrictions and covenants contained in this contract. No building shall be erected upon any of said lots or house-sites in said tract at any location other than that designated on said lot on the map of said Tract 8702, and at the point or points designated by stakes set upon said lots or house-sites in accordance therewith, but said Association shall have the right and authority to change or alter the precise location of buildings upon said lots or house-sites to such reasonable extent as will facilitate and enable the erection of buildings of types desired by the owner of such lots or house-sites. In case of a disagreement between the owner and said Association relating to such locations, then the matter shall be submitted to a disinterested, competent landscape architect, selected by said Association, to determine whether such location as desired by such owner will interfere with or be objectionable to any other owner or owners of lots or house-sites in said Tract, and his decision will be binding and final upon all of the lot owners or occupants of said tract."

[4] Section 9 of the covenants, conditions and restrictions states, "No trees, hedges or shrubbery shall be planted or grown upon said lots or any of them, or any wall built which shall interfere with the views from other lots or house-sites, and the Association shall have the right to determine whether such planting or building wall will in anywise affect the use and enjoyment of other lot owners or occupants of other property in said Tract, and in case the owner of a lot or house-site or the owner of any other lot or house-site in said Tract, does not acquiesce in the decision of said Association respecting such matters, then the matter shall be submitted to a disinterested, competent Landscape Architect selected by the Association, and his decision shall be binding upon such owner, the Association and upon all other owners or occupants of said Tract."

Officers' Assn., supra, 49 Cal.App.4th at p. 71.) Sections 4 and 9 of the covenants, conditions and restrictions are inapplicable in the circumstances of this case. Plaintiffs have not demonstrated that their objections to the Andersons' building plans related to the precise location of the proposed residence on the lot or the use of landscaping.

IV. DISPOSITION

The judgment is affirmed. Defendants, Alta San Rafael Association, Inc., Marilyn Buchanan, Charles Malouf, Anne Longyear, and John Craig, are to recover their costs on appeal from plaintiffs, Janice Sharp and Dane Hoiberg.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

TURNER, P.J.

We concur

ARMSTRONG, J.

KRIEGLER, J.